

Testimony for the Assembly Committee on Judiciary and Ethics
ASSEMBLY BILL 423
The District Attorney Protection Act

I. Current Law

- A. Under Wisconsin Statute Section 920.203, it is a Class H felony to "intentionally cause bodily harm or threaten to cause bodily harm to the person or family member of any judge."
- i. For a Class H Felony, the penalty is a fine of up to \$10,000, or imprisonment of up to 6 years, or both; however, for a repeat offender, the term of imprisonment may increase up to 2 years with prior misdemeanor convictions, and up to 6 years with a prior felony conviction.

II. The Need for Change

- A. While the court room may not seem like a dangerous place, court officials voluntarily place both themselves and their families in harm's ways each and every day in order to bring criminals to justice and resolve civil disputes.

The U.S. Department of Justice – Bureau of Justice Statistics tracks work-related threats and assaults received by staff of State prosecutors' offices on a bi-annual basis. Their 2005 report, the latest that they have published shows the following:

- The number of threats related directly with the size of the population that the prosecutors' office served - 84% of large offices (serving a population of 1 million or more) received work-related threats; 57% of medium offices (serving a population of 250,000-999,999) received threats; 43% of small offices (serving a population under 250,000) received threats and only 22% of part-time offices received threats.
- Conversely, Chief Prosecutors in 24% of part-time offices were victims of assault and battery (the average being 3% in all offices).
- In all offices, Assistant Prosecutors were more than twice as likely to be victims of battery and assault as was the Chief Prosecutor.

Further:

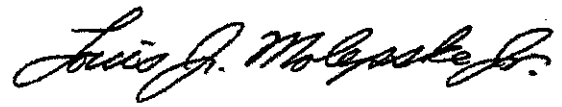
- i. Courts in Atlanta, Georgia and Reno, Nevada have both experienced horrific incidents of violence in the past few years.
- ii. Incidents in Fond du Lac County, Dodge County and Dunn County (threats to judges) have further underscored the dangers that our public servants face in the court room on a daily basis.

- iii. Many Wisconsin counties lack the resources to place metal detectors in every courthouse and deputies in every courtroom.
- C. As stated above, in recognition of this fact, our state laws make it a Class H felony to harm or threaten to harm judges and their families. Under current law, *these same protections are not afforded to state prosecutors and their families.*
 - i. Judges and prosecutors share the same courtrooms and face the same defendants.
 - ii. District attorneys and assistant district attorneys are Wisconsinites' voices in criminal trials and they play a critical role in the criminal justice system: they are the ones that prosecute criminals like sex offenders, methamphetamine producers and dive into violent domestic situations.
 - a. Moreover, district attorneys have the sole discretion to decide what cases are prosecuted, a power that is sure to draw the ire of many accused criminals.
 - b.
 - iii. Racine County's District Attorney Office has dealt with several threats in recent years, mainly in regards to the prosecution of drug-related crimes.
 - a. See ADA Sharon Riek's account below.
 - iv. In 2001, Douglas County District Attorney Dan Blank's home was firebombed by a jailed drug leader that he was prosecuting. Fortunately, nobody was injured.
 - v. It is thought that many other threats against district attorney's occur but are not reported because it is simply thought of as "part of the job."

III. Assembly Bill 423

- A. Assembly Bill 423 adds district attorneys, assistant district attorneys, deputy district attorneys and their families to the protections currently afforded to judges and their families under Wisconsin Statute Section 940.203(2).
- B. This proposal would reflect the potential criminal influence that is already outlined for Wisconsin Judges and their families.
- C. This Bill is not expected to have any fiscal imp on the State of Wisconsin.
- D. AB-423 is supported by the *Wisconsin District Attorney Association*, the *Association of State Prosecutors*, the *Milwaukee Police Association*, the *Wisconsin Sheriffs and Deputy Sheriffs Association*, and the *Wisconsin Chief of Police Association*.

Respectfully submitted,

A handwritten signature in cursive script, reading "Louis J. Molepske, Jr.".

Louis Molepske, Jr.
State Representative
71st Assembly District

Firsthand DA Experiences

I am a prosecutor in Racine County assigned to what I refer to as a "guns and drugs" caseload. I frequently prosecute gang members for violence committed against both fellow gang members and innocent bystanders who happen to get caught in the crossfire. I have been a prosecutor for 21 years and have had the caseload I currently have for about the last 17-18 years so I would say that I am pretty well known within the drug-dealing/gang community. There have been a number of occasions when I have been verbally abused- on two occasions at grocery stores I frequent but the most troublesome incident occurred recently. I used to belong to the local YMCA where I would work out at lunch. Generally, the gang members that I would come in contact with would be respectful or simply ignore me. I was in the locker room having just showered after completing my workout. I was approached by a female in the locker room who began screaming at me and threatening me for prosecuting her "baby's daddy"- I had no idea who she was or who I was prosecuting that caused this verbal tirade. Also, needless to say, being virtually naked was a distinct disadvantage. I can find the humor now as I was able to escape unscathed but when this occurred I was quite distressed and stopped going to that gym.

I have also had a "contract" put out on me by a young man I was prosecuting for his drug dealing activities. That matter was handled in Federal Court after the gentleman was federally indicted for his drug dealing activities. That young man's name was *Name Redacted* and he had been adjudicated delinquent for a homicide some years before and had been released from custody but taken up where he left off with his gang involvement and their drug dealing enterprise. With the extensive gang ties, he had the means by which to have the request acted on as the homicide he committed as a juvenile gave him significant stature within the gang.

If you have any other questions or concerns, please do not hesitate to contact me.

Sharon Riek, Assistant District Attorney
Racine County District Attorney's Office

Several years ago, I received a letter from an inmate incarcerated in the Wisconsin State Prison. He related that his cellmate (whom I had prosecuted in Green County for several Burglaries and who had received a lengthy prison sentence), had talked about making plans to do a drive-by shooting at my residence. (This complaint was forwarded to the institution and an investigation was done).

This was particularly disconcerting for me because the suspect had been paroled on the CIP program after about two years on his 7 year sentence, at the time of his release, he moved in with his mother, who lived about 2 miles from my residence (I live in a rural area about 1 mile from the Green and Lafayette County line near Browntown, WI). In addition, the suspect was later apprehended and charged with felon in possession of a

firearm and hunting deer in closed season, (he had been driving around at night shining and shooting at deer in the rural Browntown area). His extended supervision was revoked and he is currently sitting in the Wisconsin State Prison on the original Burglary charges.

As a elected District Attorney and career prosecutor who lives in a rural area of Wisconsin, I am particularly pleased that the Legislature is giving consideration to this legislation.

Sincerely,

Gary L. Luhman
Green County District Attorney

In response to your solicitation for examples of specific examples of conduct I feel the need to detail my concerns. I have been a prosecutor for over 9 years. Although I have never been physically assaulted, there have been several instances when I felt threatened and concerned for my safety. I can recall several times dealing with persons in the lobby of our DA's office who refused to leave, were intimidating reception staff, and security had not yet responded. The people I recall dealing with were angry, loud, and visibly aggressive (i.e. abusive language, pacing, clenched fists, flared nostrils). In addition, there have been numerous instances where after dealing with someone they have muttered expletives or threatening language while walking away.

I think it is particularly important for the legislature to know that, as prosecutors, we are usually the people perceived by defendant's and their families as trying to send them to jail or prison. In addition, we are frequently intervening in extremely volatile situations such as domestic abuse, spouse or child separations, and gang activity. Lastly, please remember that the people coming through the system very often have significant dysfunction in their lives, significant unaddressed mental health issues, and are in desperate circumstances.

It is important for the legislature to recognize the important role prosecutors play in the criminal justice system and the risks inherent in our jobs. A defendant choosing to continue their criminal behavior against members of the criminal justice system should be perceived by all as a significant criminal offense.

Ryan C. Wetzsteon
Assistant District Attorney
Marathon County District Attorney's Office

My name is Mary Hart. I have been a prosecutor for the past 18 years in Kenosha County. I primarily work in juvenile court and am very familiar with the emotional aspects which come with the removal of children from a parent's home or with the termination of parental rights.

Parents have directed vulgar comments toward me on occasion - while inappropriate, in light of the emotional nature of juvenile court, I understand and am able to walk away without genuine fear for my safety. However, there was an occasion in which I was genuinely concerned for my own safety and the safety of my family. The attachment outlines what happened - in words.

The emotions, intonation of the parent's voice and his physical actions made his threats even more dangerous to me. The father was on extended supervision through Brown County and was placed on a probation hold for several months as a result of his threats. -

Mary Hart, Assistant District Attorney
Kenosha County District Attorney's Office

Incident Report from ADA Hart -

October 12, 2005

Incident Report:

During the noon hour today we had a termination of parental rights dispositional hearing regarding *names redacted* in Judge Wagner's court room. The court terminated the parental rights of the father, Mr. J, to his children.

The father left the court room and I spoke with the foster mother and foster sister for a few moments. I then prepared to leave the courtroom with them. As I was leaving the courtroom, the father came back into the courtroom and we met at the door. At that time, the father made a comment about being happy that everyone is laughing. I proceeded down the hallway by myself. Mr. J. was walking behind me and stating in a loud voice, "you take mine, I'll take yours." Mr. J. said that statement more than one time as I am walking down the hallway. He also said, "I hope that no one takes your kids" as he passed me in the hallway. Mr. J. then stopped at the elevator and began to swear. I continued to walk down the hallway and down the stairs. I did not reply to any of Mr. J.' statements.

I stopped at the 2nd floor landing to tell the State Patrol officer that the man he hears swearing upstairs is mad at me as the court terminated his parental rights. I told the officer that I was going to my office and asked if he would ensure that Mr. J. did not follow me. I went back to my office. I contacted Mr. J's attorney, and informed him of Mr. J's statements as Mr. J's attorney was to meet with Mr. J. immediately after the court hearing at his office. I considered Mr. J's comments as a threat to my safety and the safety of my family.

I am an assistant district attorney in Manitowoc County, and for a time I lived in Sheboygan County and commuted. In 2006, I charged a defendant with stalking. The day after this defendant received a court document bearing my name, he tracked me to my home, followed me to the YMCA at 5:45 in the morning, and slashed my tire with an ice pick while I was inside exercising.

Jerilyn Dietz
Assistant District Attorney
Manitowoc County

I was prosecuting a defendant, FL, for numerous counts of stalking, domestic violence, bail jumping and threats to a judge. These cases were very serious and after the defendant threatened to kill the judge handling his cases I was successful in keeping him in custody (he had previously posted over \$15,000 in cash bond.) While these cases were pending, I was contacted by the Wisconsin Department of Justice and informed that the defendant was looking to hire someone to kill me (while he was in custody) for \$5000. An undercover investigation was launched and the defendant did in fact contract with the undercover investigator to have me killed. FL identified me in photos to confirm the investigator had the right person, instructed that I should be killed prior to his sentencing hearing while he was in custody so as to reduce the opportunity of him being a suspect. He also had his family provide a shotgun as consideration until the deed was done and he could pay the full amount.

The defendant was ultimately convicted of conspiracy to commit 1st Degree Intentional Homicide in Marquette County (08 CF 114) and received a 10 year prison sentence (6 yrs initial confinement and 4 years extended supervision).

There is no doubt in my mind that I am quite lucky that someone in the Marquette County jail snitched on the defendant allowing the person the defendant contracted with to be an undercover agent. I am certain the defendant would have found someone more than willing to oblige him had the agent not come along. Unfortunately, in my twelve years as a prosecutor, this is just one of several situations that I have faced with respect to defendant threatening me. I am sure many prosecutors have similar stories, however their cases were not investigated or prosecuted. Any legislation that might provide a deterrent effect in order to protect prosecutors would be helpful.

I hope learning of my experience will help you in your efforts. If you have any questions please don't hesitate to contact me.

Sincerely,

Jennifer Moton
Assistant District Attorney
Portage County

I have been an ADA for 3 years. Thankfully, I have never been assaulted; however, I have been threatened by a very frightening man. This was done on the record, so there were no factual issues to contend with.

There is another ADA in our office that had both his and his family threatened on many occasions by a defendant. This same defendant threatened a judge's life as well. All were done in writing, so, again, there were few factual issues to contend with.

I appreciate the fight in regards to this law. It is important to me, especially in regards to my family's protection. I believe that people often forget just how hated we prosecutors truly are by some of these defendants, sometimes even more than the judges.

Additionally, I have found that some of the male defendants (particularly those charged with domestic abuse related issues) are filled with pure hatred towards the female prosecutors, enough to threaten or possibly hurt them.

Again, thanks for the help.

Angela Poth
Assistant District Attorney
Wood County

I write in response to your e-mail in which you are soliciting information related to enhanced penalties for perpetrators of assaults on District Attorneys (or Assistant District Attorneys) or their families. I wish to make you aware of a case involving two men, Harlan Schwartz and William Teas, who were charged and convicted of the firebombing of the home of Douglas County District Attorney Dan Blank at the behest of a gang leader whom Blank was prosecuting for murder, who was Alejandro Rivera (see attached case), who I believe was an Insane Gangster. Mr. Schwartz was convicted in Douglas County 2000CF000076; William Teas was charged and convicted in Case No. 2000CF000078. The two were charged with trying to burn down Blank's garage Dec. 26 and firebombing his home Feb. 2.

In a related way, I also have been the target of threats by gang members (the Latin Kings) who I have been involved in prosecuting in Milwaukee County. Copies of portions of letters illustrating this are attached. I bring this to your attention as you have requested information on this subject. However, as an assistant district attorney, I can not and do not speak for Milwaukee County in taking any position about this legislation.

I appreciate your attention to this matter.

David Robles
Assistant District Attorney
Milwaukee HIDTA

Association of State Prosecutors

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Catharine White, President, Shawano-Menominee Counties

Assembly Committee on Judiciary and Ethics
Representative Gary Hebl, Chairperson
Room 120 North
Wisconsin State Capitol
Madison, WI 53703

November 3, 2009

Dear Committee Members,

I am writing today on behalf of the Association of State Prosecutors in support of AB 423 relating to battery to a district attorney or assistant district attorney.

Across Wisconsin, approximately 360 full time Assistant District Attorneys are responsible for criminal prosecutions and fight daily to put dangerous offenders behind bars. Sadly, for their role in the criminal justice system, prosecutors live with the risk that they may become targets for vengeful criminals they have prosecuted.

AB 423 imposes the same penalty for battery to a district attorney or assistant district attorney as current law provides for battery to a judge. We think this is common sense legislation that reflects the inherent dangers in serving the public in criminal court.

The Association of State Prosecutors appreciates Representative Molepske's leadership on this issue and encourages all committee members to support this legislation.

Thank you for your consideration.

Sincerely,



AJ Wilson

-On behalf of the Association of State Prosecutors